



U.S. Citizenship
and Immigration
Services

FILE:

Office: LOS ANGELES, CA

Date: OCT 25 2004

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent unwarranted
invasion of personal privacy

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DISCUSSION: The waiver application was denied by the Interim District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized United States citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse, mother and children.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated September 17, 2003.

On appeal, counsel asserts that the applicant's spouse will suffer extreme hardship as a result of the denial of the waiver. *Brief in Support of Appeal*, dated October 13, 2003.

In support of these assertions, counsel submits a brief, dated October 13, 2003; an affidavit of the applicant's spouse, dated October 13, 1999; a copy of the marriage license of the applicant and his spouse; a letter from a physician treating the applicant's mother, dated October 6, 2003 and copies of tax and financial documents for the applicant and his spouse. The entire record was considered in rendering this decision.

The record reflects that on or about August 4, 1993, the applicant presented a Philippine passport and a United States visa in the name of another individual in order to procure admission into the United States.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the

applicant's spouse and/or parent. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel contends that the applicant's spouse would suffer extreme hardship if she relocates to the Philippines in order to remain with the applicant. Counsel indicates that the applicant's spouse has resided in the United States for approximately 13 years. *Brief in Support of Appeal*, dated October 13, 2003. The record further reflects that the children and grandchildren of the applicant's spouse reside in the United States. *Id.* at 2. Counsel states that the applicant's spouse provides full time care to the applicant's mother who suffers with Parkinson's disease. *Letter from Armen Cherik, MD*, dated October 6, 2003 (stating that the applicant's mother requires 24-hour supervision and care and is totally dependent for activities of daily living). Counsel further indicates that the applicant's spouse provides care for her grandchildren while her daughter works. *Affidavit of Sofia Y. Placheta Lavarias*, dated October 13, 1999. Counsel asserts that the applicant's spouse suffers from carpal tunnel syndrome and would be unable to obtain adequate medical care for the condition in the Philippines. *Id.* The applicant's spouse states that she is fearful that she will be unable to obtain employment in the Philippines owing to her advanced age and lack of higher education. *Id.*

Counsel fails to establish that the applicant's spouse would suffer extreme hardship if she remains in the United States maintaining close proximity to her family members, ability to care for the applicant's mother and her grandchildren and treatment for her medical condition. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's spouse indicates that she and the applicant are employed as co-managers of their apartment complex and that she cannot perform the job herself. *Affidavit of Sofia Y. Placheta Lavarias*. The record fails to establish that the applicant's spouse will be unable to maintain her employment in the absence of the applicant. The record does not demonstrate that the applicant's employer cannot or will not find a replacement for the applicant while the applicant's spouse continues her duties. Further, the record fails to establish that the applicant will be unable to secure employment from a location outside of the United States in order to financially provide for himself and his family.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be

expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel states that the applicant's spouse will be unable to endure separation from the applicant. *Brief in Support of Appeal* at 3. The AAO recognizes that the applicant's spouse will likely endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse or parent caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.